



February 22, 2005

SENATE BILL No. 20

DIGEST OF SB 20 (Updated February 17, 2005 12:36 pm - DI 102)

Citations Affected: IC 22-2; IC 22-5; noncode.

Synopsis: Wage payment issues. Provides a procedure for an employer to deduct amounts for which a wage assignment may be made that are due to the employer from an employee from the employee's unpaid wages. Allows an employee whose average weekly wage is less than \$1,000 to recover up to two times the amount of unpaid wages and reasonable attorney fees when an employer's failure to pay an employee's wages does not occur in good faith. Exempts employees who are classified as exempt under the federal Fair Labor Standards Act from the state provisions concerning wage payment. Permits a wage assignment for: (1) payment for uniforms; (2) payment for tools and equipment; or (3) tuition repayment. Establishes a fee for issuing a replacement payroll check in certain circumstances. Repeals and relocates language making it a Class C infraction for an employer to sell merchandise or supplies to an employee for a price higher than to the public. Repeals a chapter concerning the regulation of wage payments, which includes the following provisions: (1) A provision requiring an employer to pay employees in commercial paper. (2) A duplicate provision concerning frequency of wage payments. (3) A provision containing outdated language concerning liens of laborers.

Effective: Upon passage; July 1, 2005.

Young R Michael

January 4, 2005, read first time and referred to Committee on Rules and Legislative Procedure.

February 8, 2005, amended; reassigned to Committee on Pensions and Labor.
February 21, 2005, amended, reported favorably — Do Pass.

SB 20—LS 6182/DI 13+



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February 22, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 20

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-2-5-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Every person, firm,
3 corporation, limited liability company, or association, their trustees,
4 lessees, or receivers appointed by any court, doing business in Indiana,
5 shall pay each employee at least semimonthly or biweekly, if requested,
6 the amount due the employee. The payment shall be made in lawful
7 money of the United States, by negotiable check, draft, or money order,
8 or by electronic transfer to the financial institution designated by the
9 employee. Any contract in violation of this subsection is void.
10 (b) Payment shall be made for all wages earned to a date not more
11 than ten (10) **business** days prior to the date of payment. However, this
12 subsection does not prevent payments being made at shorter intervals
13 than specified in this subsection, nor repeal any law providing for
14 payments at shorter intervals. However, if an employee voluntarily
15 leaves employment, either permanently or temporarily, the employer
16 shall not be required to pay the employee an amount due the employee
17 until the next usual and regular day for payment of wages, as

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established by the employer. If an employee leaves employment voluntarily, and without the employee's whereabouts or address being known to the employer, the employer is not subject to section 2 of this chapter until:

(1) ten (10) **business** days have elapsed after the employee has made a demand for the wages due the employee; or

(2) the employee has furnished the employer with the employee's address where the wages may be sent or forwarded.

SECTION 2. IC 22-2-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a) Except as provided in subsection (b), every such person, firm, corporation, limited liability company, or association who shall fail fails to make payment of wages to any such an employee as provided in section 1 of this chapter shall as liquidated damages for such failure, pay to such the employee for each day that the amount due to him the employee remains unpaid interest at the annual rate of ten percent (10%) of on the amount due to him the employee in addition thereto: not exceeding double the amount of wages due; and said damages to the wages due.**

(b) Upon termination of an employment relationship, the employer shall pay to the employee the unpaid wages minus any amount described in subsection (c) deducted as due to the employer from the employee.

(c) An employer making a deduction from an employee's unpaid wages under subsection (b) is limited to deductions for the purposes for which a wage assignment may be made under IC 22-2-6-2(b).

(d) At the employee's request, an employer that deducts an amount under subsection (b) shall provide the employee with a written notice itemizing the amounts deducted. The employer shall provide the written notice required by this subsection not later than fourteen (14) days after the date of the employee's request.

(e) The wages, including any amount in disagreement under subsection (b), may be recovered in any court having jurisdiction of a suit to recover the amount due to such the employee, and in any suit so brought to recover said wages or the liquidated damages for nonpayment thereof, or both, the court shall tax and assess as costs in said case a along with reasonable fee for the plaintiff's attorney or attorneys: attorney's fees incurred by the employee.

(f) This subsection applies only to an employee whose average weekly wage from an employer is less than one thousand dollars (\$1,000) per week. If a court finds that an employer's failure to pay an employee's wages as set forth in section 1 of this chapter did not

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1 occur in good faith, the court may order the employer to pay:

- 2 (1) not more than two (2) times the amount of unpaid wages
 3 owed the employee; and
 4 (2) reasonable attorney's fees.

5 (g) This section does not preclude the employer or employee
 6 from recovering other damages to which either is entitled.

7 SECTION 3. IC 22-2-6-2 IS AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Any assignment of the wages
 9 of an employee is valid only if **it is an allowed deduction under**
 10 **federal law or** all of the following conditions are satisfied:

11 (1) The assignment is:

- 12 (A) in writing;
 13 (B) signed by the employee personally;
 14 (C) by its terms revocable at any time by the employee upon
 15 written notice to the employer; and
 16 (D) agreed to in writing by the employer.

17 (2) An executed copy of the assignment is delivered to the
 18 employer within ten (10) days after its execution.

19 (3) The assignment is made for a purpose described in subsection
 20 (b).

21 (b) A wage assignment under this section may be made for the
 22 purpose of paying any of the following:

- 23 (1) Premium on a policy of insurance obtained for the employee
 24 by the employer.
 25 (2) Pledge or contribution of the employee to a charitable or
 26 nonprofit organization.
 27 (3) Purchase price of bonds or securities, issued or guaranteed by
 28 the United States.
 29 (4) Purchase price of shares of stock, or fractional interests
 30 therein, of the employing company, or of a company owning the
 31 majority of the issued and outstanding stock of the employing
 32 company, whether purchased from such company, in the open
 33 market or otherwise. However, if such shares are to be purchased
 34 on installments pursuant to a written purchase agreement, the
 35 employee has the right under the purchase agreement at any time
 36 before completing purchase of such shares to cancel said
 37 agreement and to have repaid promptly the amount of all
 38 installment payments which theretofore have been made.
 39 (5) Dues to become owing by the employee to a labor
 40 organization of which the employee is a member.
 41 (6) Purchase price of merchandise sold by the employer to the
 42 employee, at the written request of the employee.

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(7) Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee subject to the amount limits set forth in section 4(c) of this chapter.

(8) Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.

(9) Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.

(10) Payment to any person or organization regulated under the Uniform Consumer Credit Code (IC 24-4.5) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.

(11) Premiums on policies of insurance and annuities purchased by the employee on the employee's life.

(12) The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.

(13) A judgment owed by the employee if the payment:

(A) is made in accordance with an agreement between the employee and the creditor; and

(B) is not a garnishment under IC 34-25-3.

(14) Payment for the purchase or maintenance of uniforms worn by the employee while performing duties for the employer.

(15) Payment for the purchase or rental of tools and equipment used by the employee while performing duties for the employer.

(16) Payment or repayment of the employee's tuition for:

(A) a postsecondary educational institution;

(B) an apprenticeship training program; or

(C) an educational training program;

approved by the employer.

SECTION 4. IC 22-2-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. **(a) An employer who deducts the fee described in section 4 of this chapter does not violate this section.**

(b) It is unlawful for any employer to assess a fine on any pretext against any employee and retain the same or any part thereof from his the employee's wages.

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(c) An employer who violates this section commits a Class C infraction.

SECTION 5. IC 22-2-8-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4. (a) Notwithstanding section 1 of this chapter, an employer may deduct from an employee's wages a fee computed under subsection (b) to issue a replacement payroll check at the written request of the employee because of theft, destruction, or other loss of the original payroll check after receipt by the employee.**

(b) The fee described in subsection (a) is equal to:

(1) the amount charged the employer by a financial institution to stop payment on the original payroll check; plus

(2) the lesser of:

(A) the employer's reasonable costs incurred to reissue the payroll check; or

(B) twenty dollars (\$20).

SECTION 6. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 6. Employer Sales to Employees

Sec. 1. An employer may not sell to an employee of the employer any:

(1) merchandise; or

(2) supplies;

at a price higher than the employer sells the merchandise or supplies for cash to another person who is not an employee of the employer.

Sec. 2. A person who violates section 1 of this chapter commits a Class C infraction.

SECTION 7. IC 22-2-4 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 8. [EFFECTIVE JULY 1, 2005] **IC 22-2-8-4, as added by this act, applies to wages first payable after June 30, 2005.**

SECTION 9. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Harrison be removed as author of Senate Bill 20 and that Senator Young R Michael be substituted therefor.

HARRISON

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 20, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Pensions and Labor.

(Reference is to SB 20 as introduced.)

GARTON, Chairperson

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 20, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 21, after "amount" insert "**described in subsection (c)**".

Page 2, between lines 21 and 22, begin a new paragraph and insert:

"(c) An employer making a deduction from an employee's unpaid wages under subsection (b) is limited to deductions for the purposes for which a wage assignment may be made under IC 22-2-6-2(b)."

Page 2, line 22, delete "(c)" and insert "**(d)**".

Page 2, line 27, delete "(d)" and insert "**(e)**".

Page 2, between lines 33 and 34, begin a new paragraph and insert:

"(f) This subsection applies only to an employee whose average weekly wage from an employer is less than one thousand dollars (\$1,000) per week. If a court finds that an employer's failure to pay an employee's wages as set forth in section 1 of this chapter did not occur in good faith, the court may order the employer to pay:

(1) not more than two (2) times the amount of unpaid wages owed the employee; and

(2) reasonable attorney's fees."

Page 2, line 34, delete "(e)" and insert "**(g)**".

and when so amended that said bill do pass.

(Reference is to SB 20 as printed February 9, 2005.)

HARRISON, Chairperson

Committee Vote: Yeas 7, Nays 3.

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